IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.614 of 2000.

Date of decision: September 20th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Sita Ram. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the Respondent: Mr. B.C. Negi, Advocate.

Surinder Singh, J (oral):

The respondent was tried and acquitted for the offence under Sections 353, 504 and 506 of the Indian Penal Code by the trial court, which has been assailed in this appeal.

In brief, the prosecution story is that on 10.11.1993, Kishori Lal, Kanungo, Halqa Ajmerpur was accompanied by Halqa Patwari Baldev Dass. They went to demarcate the land of Ramesh Kumar and PW2 Parkash Chand in village Lanjta, as per the directions of Tehsildar, Ghumarwin. After the demarcation of Khasra No. 628/131, owned by Budhi Singh and khasra No. 133 owned by the State of Himachal Pradesh, when the said Kanungo was preparing the report in the Verandah of the house of Budhi Singh, at about 3.30 p.m., the respondent came there and asked the Kanungo as to why and under whose orders, he had come there. It is alleged that the respondent abused and pushed him. Budhi Singh intervened

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Whether reporters of local Papers may be allowed to see the judgment? Yes

and saved him. The Kanungo aforesaid was alleged to have been deterred to discharge his official duty and while leaving the place, the respondent is alleged to have threatened the Kanungo with dire consequences.

On the statement recorded under Section 154 of the Code of Criminal Procedure of the Kanungo Kishori Lal, a formal FIR was registered and the police visited the spot, prepared the site plan, recorded the statements of the witnesses and after collecting the necessary documents, a challan was presented in the court for trial for the above offences. The respondent was charge-sheeted, to which he pleaded not guilty and claimed trial.

The prosecution examined Roshan Lal (PW1), Parkash Chand (PW2), Ashok Kumar (PW3), Inder Singh (PW4), PW5 Mehar Chand, PW6 Budhi Singh, Baldev Dass, Patwari (PW7), HC Prem Lal (PW8) and Sohan Singh (PW9). Respondent was also examined under Section 313 of the Code of Criminal Procedure. His case was denial simplicitor. According to him, Shri Parkash Chand is inimically disposed of towards him. Many cases were filed by him against the respondent. Since he is an employee of revenue department and PW Budhi Singh is the brother of Parkash Chand, due to this enmity, he has wrongly spoken against him.

After hearing the parties and going through the evidence on record, the learned trial court acquitted the respondent, on the ground that the prosecution did not succeed in proving the offences charged that the Kaungo Kishori Lal and Patwari Baldev Dass were performing the public duties as public servants and further that the respondent had used filthy abuses to them.

The acquittal of the respondent has been challenged in this appeal.

I have heard the learned counsel for the parties and carefully reappraised the evidence on record.

At the very outset, I would like to say that under the H.P. Land Revenue Act the Kaungo is not authorized to do the demarcation of the land and the prosecution has failed to produce any order under which they were undertaking the work. Though the Field Kanungo is a public servant, but under the colour of his office, he cannot assume any duty which is not bestowed under the law to him. The learned Additional Advocate General has frankly and squarely conceded that no evidence has been brought on record authorizing the Kaungo to demarcate the land in question. It is also not clear from the record as to what type of filthy language the respondent had used, in order to find out whether using of such language amounted to any offence. During the pendency of the case the Field Kanungo Kishori Lal had expired, he could not be examined. Whereas, PW2 Parkash Chand is the brother of Budhi Singh, who is locked in litigation with respondent in many cases for the last 15 years and even he has admitted this fact in his cross-examination. Further PW3 Ashok Kumar has stated that the respondent was not present on the spot at the time of demarcation. PW6 Budhi Singh is the person in whose verandah, the alleged report was prepared by the revenue officials. He has admitted that Parkash chand PW2 is his real brother and further stated that during the demarcation if his house comes in his ownership instead of khasra No.133, in that event, the land of respondent Sita Ram will fall within the road area. Therefore, in my opinion, the alleged demarcation would have effected the right of the respondent, thus he was within his right to seek clarification to know under whose authority the demarcation was being carried out. In view of the above, I am in agreement with the findings arrived at by the learned

trial court that the prosecution could not prove its case in accordance with law and the respondent was rightly acquitted. Accordingly, the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

September 20, 2007. **(Surinder Singh)**
(PDS) **Judge**.